

FILED

JUL 26 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID DOLIVEK,

Defendant - Appellant.

No. 05-50245

D.C. No. CR-02-00045-RSWL

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

David Dolivek appeals from his guilty-plea conviction and 121-month sentence imposed for possession of child pornography, possession of more than five grams of crack cocaine, and unauthorized importation of a destructive device, in violation of 18 U.S.C. §§ 922(1), 2252A(a)(5)(B), and 21 U.S.C. § 844.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Dolivek has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. Dolivek has filed a pro se supplemental brief. The government has filed a motion to dismiss.

Because our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 82-83 (1988), indicates that Dolivek knowingly and voluntarily waived his right to appeal and was sentenced within the terms of the plea agreement, we enforce the waiver and dismiss the appeal. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered knowingly and voluntarily); *see also United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005) (noting that the changes in sentencing law imposed by *United States v. Booker*, 543 U.S. 220 (2005), did not render waiver of appeal involuntary and unknowing).

The government's motion to dismiss is **GRANTED**. Counsel's motion to withdraw is **GRANTED**.

DISMISSED.